IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.749 OF 2005
IN
FIRST APPEAL NO. 475 OF 2003

Gulam Hussain Mirza Hussain & Ors. ..Appellants
V/s
Shri Antayya Gangu Shetty & Anr. ..Respondents.

Shri A.K. Abhayankar, Advocate i/b Shri R.G. Jagtap, Advocate for the appellants.

Shri Sachin Dhakephalkar, Advocate i/b M/s Bhaishankar Kanga & Girdharlal for the respondents.

CORAM : K.J. ROHEE, J.
DATE : 21ST APRIL, 2006.

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. Heard Shri Abhyankar, Advocate for the appellants/original Plaintiffs and Shri Sachin Dhakephalkar, Advocate for the respondents/original defendants.

2. The Appellants had instituted the suit for possession of the restaurant along with arrears from 1/3/1970 to 31/3/1992 at the rate of Rs. 275/- per month and direction to pay future mesne profit from 1st April 1971 till the possession of the said restaurant is

handed over to the respondents. The said suit was decreed by the trial Court which directed to hand over the possession of the restaurant by the appellants to the respondents within a period of 30 days; to pay royalty of Rs. 3300/- for the period from 1/3/1970 to 31/3/1971 at the rate of Rs. 275/- per month and to pay future mesne profit at the rate of Rs. 500/- per month from 1/4/1971 till the possession of the restaurant is handed over.

3. Prima facie it appears that the direction contained in sub-para 3 of the operative order of the judgment is wrong. The trial Court should have directed an enquiry into future mesne profit under Order 20 Rule 12 of Code of Civil Procedure instead trial Court itself decided future mesne profits at the rate of Rs. 500/-, which is apparently wrong.

4. By an order dated 13th October, 2003 this Court while staying the execution and operation of the judgment and decree directed the appellant to deposit royalty of Rs. 5000/- per month from the date of decree till the decision of the appeal.

5. By this application the respondent wants enhancement of the amount of royalty to the extent of Rs. 50,000/- per month. No doubt during the submission the learned Counsel for the respondent restricted the prayer to Rs. 10,000/- per month.

6. It was contended on behalf of the respondents that the appellants sublet the restaurant and is getting huge amount of royalty. Whereas, on behalf of the appellant it was brought to the notice of the Court that the Municipal authority issued notice dated 16/4/2005 to the landlord (respondents) to vacate the premises forthwith, as the building is in very dilapidated condition.

7. In view of the above circumstances, I am not inclined to grant enhancement in the royalty fixed by this Court by its earlier order. The application is, therefore, rejected.

[K. J. ROHEE, J.]